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OFFICE OF PETITIONS

In re Application of	:	
Jonassen et al.	:	DECISION ON
Patent Number: 7,576,059	:	APPLICATION FOR
Issue Date: 08/18/2009	:	PATENT TERM ADJUSTMENT
Application No. 09/772607	:	and
Filing or 371(c) Date: 01/30/2001	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 4409.214-US	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 18, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred twenty-nine (329) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred twenty-nine (329) days is **GRANTED to the extent indicated herein**.

As to the "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 141 days in connection with the mailing of an Office action in response to a Reply filed September 10, 2001. Patentee provides that the Office mailed an Office action in response to the Reply on May 31, 2002, four months and 141 days after the Reply was filed.

Further as to "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 83 days in connection with the mailing of an Office action in response to a Reply filed December 9, 2002. Patentee provides that the Office mailed an Office action in response to the Reply on July 1, 2003, four months and 83 days after the Reply was filed.

Finally as to "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 44 days in connection with the mailing of an Office action in response to a Reply filed January 2, 2004. Patentee provides that the Office mailed an Office action in response to the Reply on June 15, 2004, four months and 44 days after the Reply was filed.

As to the "B" delay, Patentee provides that the "B" delay period should be 1055 days, beginning on January 31, 2004, and ending on December 21, 2006, the day that a Request for Continued Examination ("RCE") was filed, and not 748 days as calculated by this Office.

As to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the Notice to Comply With Sequence Disclosures, mailed September 28, 2001. Patentee provides that the Notice to Comply With Sequence Disclosures was satisfied on April 3, 2003. Further as to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the non-final Office action mailed May 31, 2002, on December 9, 2002. Patentee provides that the total Applicant delay for the above two periods excluding overlap is 460 days.

Patentee does not dispute reductions of 93 days, 91 days, 92 days, 92 days, 61 days or 61 days pursuant to 37 CFR 1.704(b), or an adjustment of 61 days pursuant to 37 CFR 1.702(a)(2).

As to the "A" delay period, a review of the record confirms that the Office errantly neglected to assess a reduction of 141 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of an Office action in response to a Reply filed September 10, 2001. The reduction commenced January 11, 2002, the day after the date that is four months after the Reply was filed, and ended May 31, 2002, the mailing date of the Office action in response to the Reply was mailed.

Further as to the "A" delay period, a review of the record confirms that the Office errantly neglected to assess a reduction of 83 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of an Office action in response to a Reply filed December 9, 2002. The reduction commenced April 10, 2003, the day after the date that is four months after the Reply was filed, and ended July 1, 2003, the mailing date of the Office action in response to the Reply was mailed.

In addition, as to the "A" delay period, a review of the record confirms that an Office action in response to the Reply filed January 2, 2004, was mailed on March 18, 2004, within four months of the filing of the Reply. The Office action was returned to this Office as undeliverable by the United States Postal Service ("USPS") on March 31, 2004. Thereafter, on June 8, 2004, Applicants filed a Change of Correspondence Address in this application. Accord 37 CFR 1.4(b). As such, the Office action was timely mailed to the proper correspondence address of record, and no adjustment of the patent term in connection with the mailing of the Office action in response to the Reply filed January 2, 2004, is warranted.

Finally, as to the "A" delay period, a review of the record confirms that the Office properly assessed a reduction of 61 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of the Notice of Allowance and Issue Fee Due in response to a Reply (Notice of Appeal), filed October 8, 2008. The reduction commenced February 9, 2008, the day after the date that is four months after the Reply was filed, and ended April 10, 2009, the mailing date of the Notice

of Allowance and Issue Fee Due in response the Reply. This period, however, overlaps with the “B” period of delay.

As to the “B” delay, the period is 1055 days, not 748 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on the day before the RCE was filed, or 1055 days, but not including the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, and ending on the date of mailing of the non-final Office action, March 29, 2005, or 105 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the net “B” delay period is 950 days (1055 days – 105 days), not 1055 days.

As to Applicant delay, a review of Office records confirms that a Reply to the Notice to Comply With Sequence Disclosures, mailed September 28, 2001, was filed on January 29, 2002, four (4) months and 32 days after the Notice was mailed. A reduction of 32 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant. Thereafter, on February 8, 2002, the Office mailed an Office communication informing Applicant of deficiencies in the January 29, 2002 Reply. Applicant filed a Reply including a Sequence Listing on March 12, 2002. Pursuant to 37 CFR 1.704(c)(7), a reduction of 42 days, beginning on the day after the reply having an omission was filed, January 30, 2002, and ending on the date that the reply or other paper correcting the omission was filed, March 12, 2002, was properly assessed to Applicant.

In response to the Reply filed September 10, 2001, this Office mailed a non-final Office action on May 31, 2002. A review of the Office action reveals that the Office action also addressed the Sequence Listing filed March 12, 2002, informing Applicants of a deficiency not previously noted, and re-setting the period for reply. Thereafter, on December 9, 2002, Applicants filed a Reply, including a Sequence List. The reply was filed three months and 100 days after the reply was due, and a reduction of 100 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant. In response to an Examiner’s Interview, Applicant’s thereafter filed a Sequence List on April 8, 2003. Pursuant to 37 CFR 1.704(c)(7), a reduction of 120 days, beginning on the day after the reply having an omission was filed, December 10, 2002, and ending on the date that the reply or other paper correcting the omission was filed, April 8, 2003, was properly assessed to Applicant.

Further as to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the non-final Office action mailed May 31, 2002, on December 9, 2002. However, as noted above, a reduction of 100 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant.

In view of the foregoing, the correct patent term adjustment is 390 days (285 days “A” delay + 950 days “B” delay – 784 days Applicant delay – 61 days overlap (A & B)).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**,

whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by three hundred ninety **(390)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,576,059 B2

DATED : August 18, 2009

INVENTOR(S) : Jonassen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 364 days.

Delete the phrase "by 364 days" and insert – by 390 days--

Please increase PTA by 26 days for B delay.

Fee paid and timely filed.

B Max = 1055

B Ded = 105 (Appeal)

B Net = 950

A = 285

C =)

App = 784

Overlap (A&B) = 61

$285 = 950 + 0 - 784 - 61 = 390$

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